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Total Number of Pages in This Submission

Application Number	10/829,480
Filing Date	04/21/2004
First Named Inventor	Rudolf Bichsel
Art Unit	1761
Examiner Name	Timothy F. Simone
Total Number of Pages in This Submission	4965-000111/REA

ENCLOSURES (check all that apply)

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Remarks

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Harness, Dickey & Pierce, P.L.C.	Attorney Name Christopher M. Brock	Reg. No. 27313
Signature			
Date	September 13, 2005		

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EV 717 345 061 US



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/829,480
Filing Date: 04/21/2004
Applicant: Rudolf Bichsel
Group Art Unit: 1761
Examiner: Timothy F. Simone
Title: Drum Cooker
Attorney Docket: 4965-000111/REA

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

RESPONSE

Sir:

This communication is being submitted in response to the Office Action mailed June 20, 2005.

1. Priority.

The Examiner states that Applicant has failed to comply with 37 CFR 1.63(c) because the declaration or application data sheet does not "claim" the benefit of an earlier filing date. Applicant disputes this assertion. The Reissue Declaration expressly states, *inter alia*, "I hereby claim the foreign priority benefit under 35 U.S.C. § 119(a)-(d) of German application No. 198 10 240.2, filed March 10, 1998". In addition, the application data sheet submitted with the present reissue application also expressly claims priority to the aforesaid German priority application. A

copy of the application data sheet originally submitted with the application is enclosed. Withdrawal of this objection is respectfully solicited.

2. Oath/Declaration.

The Examiner has raised several objections to the Reissue Declaration. Applicant respectfully traverses these objections.

a. Firstly, it is the Examiner's position that 37 C.F.R. 1.175(a)(1) requires that the Declaration state in its entirety that the "applicant believes the original patent to be wholly or partly inoperative or invalid ...". However, Applicant believes the Examiner is imposing an inconsistent and erroneous interpretation of the requirements of the Rule. Rule 175(a)(1) contains the word "or" five times. The definition of "or" is: "used as a function word to indicate an alternative". Thus, the Rule is providing the applicant with several alternatives from which to select that which is applicable to the case at hand. The Examiner apparently concedes the correctness of this interpretation as no suggestion is made that the Declaration also state in its entirety that the patent is invalid "by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than the patentee had the right to claim in the patent ...", when these alternatives clearly do not apply.

Thus, with respect to the first alternatives, the Rule requires that the applicant state that he believes the original patent to be wholly or partly inoperative or invalid. In the present case, Applicant is unaware of any "intervening" prior art and therefore does not believe that the inadvertent failure to perfect the claim to foreign priority in this case has rendered the patent wholly or partly invalid. Rather, of the alternatives presented by the Rule, Applicant has selected the one that best fits the present situation. This is all the Rule requires. Applicant's counsel is unaware of any controlling authority that states the entire text of the Rule must be recited in a Reissue Declaration. Reconsideration and withdrawal of this objection is respectfully solicited.

b. The Declaration has also been deemed defective because it allegedly fails to identify at least one error which is relied upon to support the reissue application. However, the Declaration expressly identifies the error to be corrected; namely, "not properly perfecting the claim to foreign priority ...". Accordingly, this requirement of the Rule is believed to be satisfied.

c. Finally, the Declaration has been objected to for not including the words "up to the time of filing of the Declaration" in the declaratory statement that the errors sought to be corrected "arose without any deceptive intent". Again, Applicant submits the Examiner is misconstruing the requirements of the Rule. Rule 175(a)(2) simply requires that the applicant state that all of the errors being corrected up to the time of filing of the Declaration "arose without any deceptive intention on the part of the applicant". The only error being corrected in the present application at the time of filing of the declaration is the claim to foreign priority. The present declaration properly recites that this error arose "without any deceptive intent" on the part of the applicant. This is all that is required under subpart (a)(2) of the Rule. In fact, even the suggested Declaration forms set forth in the MPEP § 1414 simply state: "All errors corrected in this reissue application arose without any deceptive intention on the part of the applicant". Reconsideration and withdrawal of this objection is also respectfully solicited.

Applicant's counsel would further note, with respect to the present objections raised by the Examiner to the Declaration, the exact language used in the present Declaration was also presented in a Declaration submitted in another Reissue Application, Serial No. 10/453,293, filed June 3, 2003 (now RE38,562) that was accepted without objections by the Patent Office. There have been no changes to Rule 175 since then that would now warrant a different interpretation. Accordingly, the present Reissue Declaration is believed to fully comply with the requirements of Rule 175.

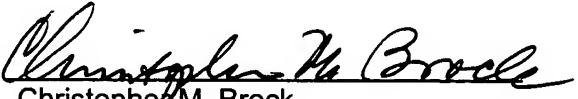
3. Claim Rejections.

Claims 1-6 of the present application stand rejected under 35 U.S.C. 251 as being based on an allegedly defective Declaration as discussed above. For the aforesaid reasons, Applicant submits the Declaration is not defective and therefore the rejection of the claims under § 251 is improper. Favorable reconsideration is respectfully solicited.

4. Applicant notes the requirement to submit the original patent which will be surrendered upon completion of prosecution.

Respectfully submitted,

Dated: September 13, 2005

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